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OFFICE OF PETITIONS

In re Application of
Gicquel, et al.
Application No. 09/855,604
Filed: May 16, 2001
Attorney Docket No. 3715.0062-01

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.55(c), filed December 3, 2004, to accept an unintentionally delayed claim under U.S.C. §§ 119(a) - (d) for the benefit of French Application Nos. FR 97/10,404, filed August 14, 1997, and FR 97/11,325, filed September 11, 1997. The petition is also being treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under § 120 for the benefit of prior filed nonprovisional application no. 09/485,536.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on May 16, 2001, and was pending at the time of filing of the instant petition. Reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii). The reference to nonprovisional application no. 09/485,536 submitted on filing was not included in an ADS or the specification, but was improperly included in the application transmittal letter.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;

(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date;

(3) the surcharge as set forth in 37 CFR 1.17(t);

(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.); and

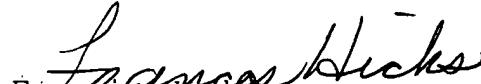
(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

Application No. 09/485,536, to which the instant application claims priority, is the national stage application of PCT/FR98/01813, filed August 14, 1998. French applications FR 97/10,404 and FR 97/11,325 were filed within one year of this date.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.55(c) and 37 CFR 1.78(a) (3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78 must be met. Accordingly, the examiner will, in due course, consider the benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Group Art Unit 1636 for consideration of the amendment filed January 3, 2005.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Cliff Congo at (571)272-3207.


Francis Hicks
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy